

REMARKS

In the above-identified Office Action the examiner has rejected claims 1–20 based on the grounds of non-statutory obviousness type double patenting over co-pending Application No. 10/628,502. Applicant believes that this cited application will soon be abandoned and accordingly believes that this provisional rejection is therefore obviated.

In addition the examiner has objected to claims 1 and 10–13 based on the capitalization of the word curdlan. Applicant does not find a capitalized version of curdlan in claims 1 or 10-12 of the subject application; claim 13 has been corrected in this regard.

In addition the examiner has suggested that the first line of the specification be amended to state continuity with Application No. 10/628,502. By the above amendment applicant has done this.

Claims 12 and 13 have been rejected under 35 U.S.C. 112 for lack of antecedent basis. Applicant has amended claims 12 and 13 to correct the lack of antecedent basis and as such believes that the claims are now acceptable.

Claims 1 and 2 have been rejected as unpatentable over Yajima in view of California Wheat commission and Schellhaass et al. The examiner has stated it would have been obvious to add various amounts of gluten to flour or to use flours containing various amounts of wheat protein. As to claim 2 the examiner has stated that it would have been obvious to use rice or cornmeal in place of the buckwheat flour as disclosed by the reference and use 50% of the non-wheat flour.

Applicant has amended claim 1 by adding the limitations of claim 2 therein and cancelling claim 2. In addition claim 1 has been amended to recite that the non-wheat cereal is an oat flour. As such applicant believes that claim 1 now recites over the art in that there is no dry flour composition taught in the references of record wherein the wheat flour provides 6-20% crude

Serial No. 10/779,913

protein and the oat flour is more than 50% by weight of the total composition.

In addition to the above claims 3 and 6-20 have been rejected as unpatentable over Yakima as applied to the above claims and further in view of Hunter. As with claim 1 applicant has amended claims 11, 16 and 17 to add the element that the oat flour is at least 50% by weight of the total weight of the total composition. As stated above it is believed that the references of record do not teach a dry flour mixture comprising wheat, gluten and oats wherein the crude protein in the wheat and the wheat gluten provides 6-20% crude protein and the oat flour is at least 50% by weight of the total composition. As such applicant believes that claims 3 and 6-20 are now allowable over the cited art.

Claims 1-5 and 11 have been rejected as unpatentable over Lai et al. in view of California Wheat Commission. The examiner has stated it would have been obvious to use oat flour if gluten is added because the added gluten will make up for the non-gluten containing no flour. However, there is no teaching in these references that the oat flour is at least 50% by weight of the total composition. Applicant believes this to be a non-obvious addition to a dry flour mixture and accordingly believes it to be claims 1-5 and 11 to be patentable there over.

Applicant hereby requests reconsideration and reexamination thereof. With the above amendments and remarks, this application is considered ready for allowance and Applicant earnestly solicits an early notice of same. Should the Examiner be of the opinion that a telephone conference would expedite prosecution of the subject application, he is respectfully requested to call the undersigned at the below-listed number.

Respectfully submitted,

WELSH & KATZ, LTD.



Gerald T. Shekleton

Registration No. 27,466

Date: May 25, 2006

WELSH & KATZ, LTD.

120 South Riverside Plaza

22nd Floor

Chicago, Illinois 60606-3913

Telephone: 312/655-1500